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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 **Scott Johnson,**

18 Plaintiff,

19 v.

20 **Infinite Loop Moorpark Hotel,
21 LLC**, a Delaware Limited Liability
22 Company; and Does 1-10,

23 Defendants.

24
25 **Case No.**

26 **Complaint For Damages And
27 Injunctive Relief For Violations
28 Of: American's With Disabilities
Act; Unruh Civil Rights Act**

29 Plaintiff Scott Johnson complains of Infinite Loop Moorpark Hotel,
30 LLC, a Delaware Limited Liability Company; and Does 1-10 ("Defendants"),
31 and alleges as follows:
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33
34 **PARTIES:**

35 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
36 level C-5 quadriplegic. He cannot walk and also has significant manual
37 dexterity impairments. He uses a wheelchair for mobility and has a specially
38 equipped van.

39 2. Defendant Infinite Loop Moorpark Hotel, LLC leased the real property
40 located at or about 4241 Moorpark Avenue, San Jose, California, in March
41 2018.
42

1 3. Defendant Infinite Loop Moorpark Hotel, LLC leased the real property
2 located at or about 4241 Moorpark Avenue, San Jose, California, in January
3 2019.

4 4. Defendant Infinite Loop Moorpark Hotel, LLC leases the real property
5 located at or about 4241 Moorpark Avenue, San Jose, California, currently.

6 5. Defendant Infinite Loop Moorpark Hotel, LLC owned Aloft San Jose
7 Cupertino located at or about 4241 Moorpark Avenue, San Jose, California, in
8 March 2018.

9 6. Defendant Infinite Loop Moorpark Hotel, LLC owned Aloft San Jose
10 Cupertino located at or about 4241 Moorpark Avenue, San Jose, California, in
11 January 2019.

12 7. Defendant Infinite Loop Moorpark Hotel, LLC owns Aloft San Jose
13 Cupertino (“Hotel”) located at or about 4241 Moorpark Avenue, San Jose,
14 California, currently.

15 8. Plaintiff does not know the true names of Defendants, their business
16 capacities, their ownership connection to the property and business, or their
17 relative responsibilities in causing the access violations herein complained of,
18 and alleges a joint venture and common enterprise by all such Defendants.
19 Plaintiff is informed and believes that each of the Defendants herein,
20 including Does 1 through 10, inclusive, is responsible in some capacity for the
21 events herein alleged, or is a necessary party for obtaining appropriate relief.
22 Plaintiff will seek leave to amend when the true names, capacities,
23 connections, and responsibilities of the Defendants and Does 1 through 10,
24 inclusive, are ascertained.

25

26 **JURISDICTION & VENUE:**

27 9. The Court has subject matter jurisdiction over the action pursuant to 28
28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with

1 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

2 10. Pursuant to supplemental jurisdiction, an attendant and related cause
3 of action, arising from the same nucleus of operative facts and arising out of
4 the same transactions, is also brought under California's Unruh Civil Rights
5 Act, which act expressly incorporates the Americans with Disabilities Act.

6 11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
7 founded on the fact that the real property which is the subject of this action is
8 located in this district and that Plaintiff's cause of action arose in this district.

9

10 **FACTUAL ALLEGATIONS:**

11 12. Plaintiff went to the Hotel in March 2018 and January 2019 with the
12 intention to avail himself of its goods or services, motivated in part to
13 determine if the defendants comply with the disability access laws.

14 13. The Hotel is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 14. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
17 to provide accessible guestrooms.

18 15. On information and belief the defendants currently fail to provide
19 accessible guestrooms.

20 16. Additionally, during one of the plaintiff's visits, the defendants failed to
21 provide accessible service counters.

22 17. Finally, on the dates of the plaintiff's visits, the defendants failed to
23 provide accessible parking.

24 18. On information and belief the defendants currently fail to provide
25 accessible parking.

26 19. Plaintiff personally encountered these barriers.

27 20. By failing to provide accessible facilities, the defendants denied the
28 plaintiff full and equal access.

1 21. The lack of accessible facilities created difficulty and discomfort for the
2 Plaintiff.

3 22. The defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 23. The barriers identified above are easily removed without much
7 difficulty or expense. They are the types of barriers identified by the
8 Department of Justice as presumably readily achievable to remove and, in fact,
9 these barriers are readily achievable to remove. Moreover, there are numerous
10 alternative accommodations that could be made to provide a greater level of
11 access if complete removal were not achievable.

12 24. Plaintiff will return to the Hotel to avail himself of its goods or services
13 and to determine compliance with the disability access laws once it is
14 represented to him that the Hotel and its facilities are accessible. Plaintiff is
15 currently deterred from doing so because of his knowledge of the existing
16 barriers and his uncertainty about the existence of yet other barriers on the
17 site. If the barriers are not removed, the plaintiff will face unlawful and
18 discriminatory barriers again.

19 25. Given the obvious and blatant nature of the barriers and violations
20 alleged herein, the plaintiff alleges, on information and belief, that there are
21 other violations and barriers on the site that relate to his disability. Plaintiff will
22 amend the complaint, to provide proper notice regarding the scope of this
23 lawsuit, once he conducts a site inspection. However, please be on notice that
24 the plaintiff seeks to have all barriers related to his disability remedied. See
25 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
26 encounters one barrier at a site, he can sue to have all barriers that relate to his
27 disability removed regardless of whether he personally encountered them).

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
2 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4 26. Plaintiff re-pleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 27. Under the ADA, it is an act of discrimination to fail to ensure that the
8 privileges, advantages, accommodations, facilities, goods and services of any
9 place of public accommodation is offered on a full and equal basis by anyone
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
11 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 12 a. A failure to make reasonable modifications in policies, practices,
13 or procedures, when such modifications are necessary to afford
14 goods, services, facilities, privileges, advantages, or
15 accommodations to individuals with disabilities, unless the
16 accommodation would work a fundamental alteration of those
17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18 b. A failure to remove architectural barriers where such removal is
19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
20 defined by reference to the ADA Standards.
- 21 c. A failure to make alterations in such a manner that, to the
22 maximum extent feasible, the altered portions of the facility are
23 readily accessible to and usable by individuals with disabilities,
24 including individuals who use wheelchairs or to ensure that, to the
25 maximum extent feasible, the path of travel to the altered area and
26 the bathrooms, telephones, and drinking fountains serving the
27 altered area, are readily accessible to and usable by individuals
28 with disabilities. 42 U.S.C. § 12183(a)(2).

1 28. When a business provides facilities such as guestrooms, it must provide
2 accessible guestrooms.

3 29. Here, accessible guestrooms have not been provided.

4 30. When a business provides facilities such as service counters, it must
5 provide accessible service counters.

6 31. Here, accessible service counters were not provided.

7 32. When a business provides parking for its customers, it must provide
8 accessible parking.

9 33. Here, accessible parking has not been provided.

10 34. The Safe Harbor provisions of the 2010 Standards are not applicable
11 here because the conditions challenged in this lawsuit do not comply with the
12 1991 Standards.

13 35. A public accommodation must maintain in operable working condition
14 those features of its facilities and equipment that are required to be readily
15 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

16 36. Here, the failure to ensure that the accessible facilities were available
17 and ready to be used by the plaintiff is a violation of the law.

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**19 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
20 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
21 Code § 51-53.)**

22 37. Plaintiff repleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
25 that persons with disabilities are entitled to full and equal accommodations,
26 advantages, facilities, privileges, or services in all business establishment of
27 every kind whatsoever within the jurisdiction of the State of California. Cal.
28 Civ. Code § 51(b).

1 38. The Unruh Act provides that a violation of the ADA is a violation of the
2 Unruh Act. Cal. Civ. Code, § 51(f).

3 39. Defendants' acts and omissions, as herein alleged, have violated the
4 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
5 rights to full and equal use of the accommodations, advantages, facilities,
6 privileges, or services offered.

7 40. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
8 discomfort or embarrassment for the plaintiff, the defendants are also each
9 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
10 (c).)

11 41. Although the plaintiff was markedly frustrated by facing discriminatory
12 barriers, even manifesting itself with minor and fleeting physical symptoms,
13 the plaintiff does not value this very modest physical personal injury greater
14 than the amount of the statutory damages.

15

16 **PRAYER:**

17 Wherefore, Plaintiff prays that this Court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling Defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 plaintiff is not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. Damages under the Unruh Civil Rights Act, which provides for actual
24 damages and a statutory minimum of \$4,000 for each offense.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: October 2, 2019

CENTER FOR DISABILITY ACCESS

5 By:
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8 Amanda Seabock, Esq.
9 Attorney for plaintiff

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